THE HON'BLE MR JUSTICE V.V.S.RAO

WRIT PETITION No.11113 of 2006

.6.2006

Between:
M/s.Sree Durga Industries, represented by its
Managing Partner, Sri K.Nooka Raju

... Petitioner

AND
The Commissioner, Endowments Department,
Tilak Road, Hyderabad
And another

...Respondents

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ORDER:

The petitioner is a partnership firm. Under a contract, the second respondent entrusted the work of gold plating (described as 'Gold Malam' work) to first and second storeyed Vimana Gopuram of Sri Durga Malleswara Swamy Varla Devasthanam (hereafter called, Durga Temple). By impugned order, the second respondent, who entered into contract on behalf of Durga Temple, cancelled the contract of agreement, aggrieved by which the present writ petition is filed.

The petitioner firm is a registered contractor in the Department of Endowments. It has allegedly executed number of works in some of the famous temples in Andhra Pradesh. Be that as it is, pursuant to a tender notification dated 15.4.2002, calling tenders for execution of gold plating work in Durga Temple, the petitioner submitted a tender and his tender was accepted for Rs.63,12,187/-. The contract stipulates supply of gold by the temple and the contractor has to undertake the work by employing his own workmen. The work has to be completed within one year from the date of the work order. The petitioner alleges that after entering into contract on 26.6.2002 and receiving work order, it has completed gold plating work of the third storey of Sikharam (Gopuram) and 44 Kalasams on Durga Temple. The petitioner could not complete the balance work as the temple did not supply the gold and due to this, the petitioner is incurring a loss of Rs.5,000/- per day towards wages for 40 employees engaged for the purpose.

It is the case of the petitioner that on 16.6.2005, the correspondent of E-TV enquired about the progress of the work. He was informed by one of the partners that the work is stopped for want of supply of gold by the temple. It appears the partner further informed the E-TV correspondent that if the work is left incomplete there is likelihood of theft of copper plating already done. It is alleged that the said interview was misquoted in the news that there was a theft of copper plates in the temple. Based on the said news item in the

electronic media, the second respondent lodged a complaint with I-Town P.S. Vijayawada, which was registered as Crime No.132 of 2005 under Section 379 of Indian Penal Code, 1860 (IPC). The complaint was investigated into and the police filed a report reporting the case as false. However, another crime being Crime No.167 of 2005 was registered against one K.Venkata Ramana, one of the partners of the petitioner's firm under Sections 182 and 211 of IPC, which is still pending. The second respondent issued a show cause notice on 08.3.2006 as to why the contract given to the petitioner should not be cancelled on the ground that the partner of the petitioner gave false information to the media about the theft of copper. The petitioner submitted explanation on 17.3.2006 denying the allegations that he did not give any information to the media about the theft. The second respondent – it is alleged; without considering the explanation cancelled the contract by the impugned order.

Learned counsel for the petitioner strenuously contends that the contract was awarded to the petitioner firm as it quoted the lowest amount. The Managing Partner, the deponent herein; was never alleged to have breached the terms of the contract for the work of gold plating and therefore termination of the contract is arbitrary. The second respondent being a statutory authority could not have unilaterally terminated the contract only on the ground that one of the partners of the petitioner firm allegedly gave wrong statement to E-TV. He would also submit that the complaint being crime No.132 of 2005 under Section 379 of IPC lodged by the second respondent based on the E-TV interview was investigated as false and another crime was registered against K.Venkata Ramana, which itself cannot be a ground for terminating the contract. According to the learned counsel, whenever there is an arbitrary action on the part of the statutory authority, a writ petition would lie. **Per contra**, learned Assistant Government Pleader for Endowments submits that the writ petition is not maintainable, that the second respondent issued a notice before passing impugned order and that after termination of the contract, the work was entrusted to Tirumala Tirupati Devasthanams.

The question raised in the writ petition does not strictly arise out of discharge of public law functions by the second respondent. The question whether the contract was validly terminated or not is in the realm of contract. Even if a statutory authority enters into a contract and for any reason a contract is terminated, writ petition is not a proper

remedy. The party aggrieved has to seek redressal in a common law Court. This principle is well settled. A reference may be made to **Kerala State Electricity Board v Kurien E.Kalathil**[1], wherein his Lordship Justice Y.K.Sabharwal (as his Lordship then was) observed as under.

> … The interpretation and implementation of a clause in a contract cannot be the subject-matter of a writ petition. Whether the contract envisages actual payment or not is a question of construction of contract. If a term of a contract is violated, ordinarily the remedy is not the writ petition under Article 226. We are also unable to agree with the observations of the High Court that the contractor was seeking enforcement of a statutory contract. A contract would not become statutory simply because it is for construction of a public utility and it has been awarded by a statutory body. We are also unable to agree with the observation of the High Court that since the obligations imposed by the contract on the contracting parties come within the purview of the Contract Act, that would not make the contract statutory. Clearly, the High Court fell into an error in coming to the conclusion that the contract in question was statutory in nature**.** …The fact that one of the parties to the agreement is a statutory or public body will not by itself affect the principles to be applied. The disputes about the meaning of a covenant in a contract or its enforceability have to be determined according to the usual principles of the Contract Act. Every act of a statutory body need not necessarily involve an exercise of statutory power. Statutory bodies, like private parties, have power to contract or deal with property. Such activities may not raise any issue of public law. In the present case, it has not been shown how the contract is statutory. The contract between the parties is in the realm of private law. It is not a statutory contract. The disputes relating to interpretation of the terms and conditions of such a contract could not have been agitated in a petition under Article 226 of the Constitution of India. That is a matter for adjudication by a civil court or in arbitration if provided for in the contract. Whether any amount is due and if so, how much and refusal of the appellant to pay it is justified or not, are not the matters which could have been agitated and decided in a writ petition.

If the petitioner is aggrieved, he may sue the respondents for breach of contract and this writ petition cannot be entertained, especially when, as submitted by the learned Assistant Government

Pleader, the work is already entrusted to Tirumala Tirupati Devasthanams.

The writ petition is accordingly dismissed. No costs.

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(**V.V.S.RAO, J**)

June , 2006.
YS/pln

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[1] (2000) 6 SCC 293